

## REMARKS

Claims 1, 3-21, 23-25 and 27-40 are in the application. The amendments are made relative to the last entered amendment of August 17, 2009.

Claims 1, 3-7, 14,15, 18-27, 34,35 and 38-40 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin et al. ('352) in view of Webber (WO98/34167), both of record, in view of Knorr et al. ("Knorr," US 2002/0077929, newly cited) This rejection is respectfully traversed.

### Claims 1-4 and 21-23

Franklin is directed to a system and method for solving the problem of the consumer's inability to create one electronic shopping basket for items from many websites of many e-tailer suppliers (merchants who sell over the Internet). In absence of Franklin's invention, the electronic shopper can store shopping basket product information only on the server side, that is, only on the particular e-tailer's website. If the consumer wants to create a shopping basket for another e-tailer's website he/she must enter that website and create a second shopping basket. Franklin allows the creation of one computer-based shopping system usable on a personal computer to serve as a shopping basket for products from many websites. The present claim performs its functions so that consumers, all consumers, may order from a single, common website. The merchant (e-retailer) from each website does not appear to have the ability under Franklin's system to selectively route any of the orders to another e-tailer for fulfillment of the customer's order. Thus, the e-tailer receiving the order does not receive an order on behalf of a plurality of other e-tailers. The transaction is between the customer who created the shopping basket and the e-tailer on the website selected by the customer. The point of sale to the consumer is with the e-tailer. The e-tailer cannot route the order to another e-tailer or to the supplier to fulfill the order. There is no selective routing for fulfillment of the order as set forth in the present claims.

Franklin thus discloses a system for a consumer to selectively gather and store information from an existing merchant and from many websites in a network

environment, comprising a shopping basket to gather and store product information, a wallet in which sources of payment can be stored, and an address book in which shipping addresses can be stored, all on the existing consumer's computer. But there is no order flow controller. The e-tailer is unable to receive orders from multiple consumers on the internet using the shopping basket set up on a single website. Each consumer will set up his/her shopping basket differently and each has interest in different products and e-tailers. Moreover, the consumer, when he makes a purchase, is ordering and purchasing directly from the e-tailer, who is a retailer. In accordance with the currently amended claims, the consumer is ordering on a graphical interface directly from the product manufacturer. The *fulfillment* of that order is determined by the product manufacturer according one of the fulfillment policies recited in the claims in play at the time *as determined by the product manufacturer.*

The examiner relies upon Webber as showing a system for automating transactions of buying and distributing products in accordance with the specified policies of the supplier.

Referring to Webber's FIG. 2, the point of sale is still between the customer 251 and the specific retailer merchant 241, A-G. The fulfillment of the order is determined by the respective Internet merchants 241, A-G. While there are supply chain enterprises 277 downstream, the suppliers are merely fulfillment entities and do not directly participate on the Internet for the customer's business. To put it in a simplified way, in Webber's FIG. 2 the supply chain enterprises 277 cannot directly deal with the customer 251. In the present claims, the product manufacturer not only participates, but it controls who fulfills the consumer's order. In Webber, the supply chain enterprises 277 have no say as to which e-retailer fulfills the order. There is no selective routing of customer product orders for one or more products of a given product manufacturer among the plurality of product manufacturers from a graphical interface to the given product manufacturer or to one or more retailers identified by the given product manufacturer in accordance with the fulfillment policies selected by the given product manufacturer. The examiner states that Webber shows operational instructions, terms and conditions including fulfillment policies of the supplier that are negotiated. The examiner is suggesting that the fulfillment policy of the supplier is a negotiated contract term between

the supplier and buyer or retailer. Webber, p. 41, line 21. However, that teaches away from the present invention. The fulfillment policy is a policy of the product manufacturer and is selected by the product manufacturer. See present claims 1 and 21. Nowhere does Webber suggest that the operational instructions explicitly include control of the fulfillment terms by the product manufacturer. There is no reason taught in Webber for one of ordinary skill to desire to structure fulfillment terms as in the present claims.

Webber's system for distributing products is in essence; 1) a reverse auction where the buyer submits an offer to purchase an item - the offer includes terms, conditions and fulfillment *as specified by the buyer* – the middleman submits the offer to a pool of e-tailers – one of the e-tailers can selectively choose to accept the terms and conditions, and fulfill the order. Alternatively, Webber's system serves as 2) an electronic ordering system for just-in-time fulfillment for an e-tailer merchant and in that case the merchant is the buyer without a consumer (a business-to-business) or; 3) a ratified contract at the POS (point of sale) between two or more parties.

The examiner relies upon Knorr as teaching a system and method for electronically creating and managing orders based on purchaser fulfillments options, including having a vendor select a fulfillment policy. However, Knorr does not solve the problem of allowing the product manufacturer to also sell its products along with its retailers without cannibalizing its retailers. In Knorr, the consumer is doing no more than creating and managing an electronic shopping cart. The consumer is not ordering directly from the manufacturer where the manufacturer directly receives the order. The recipient of the order in Knorr, the e-vendor, only controls the fulfillment of orders made to him, not the orders made to the product manufacturer.

Accordingly, none of Franklin, Webber or Knorr discloses a system which functions as the presently claimed invention. None of the references solves the problem of channel conflict, that is, the problem of avoiding online competition of the product manufacturer with its brick-and-mortar retailers for the same products. Since the internet is a world-wide marketplace, a supplier is similarly prohibited from selling online in competition with its retailers without some protective conditions that would not allow the product manufacturer to cannibalize its retailers. The present invention solves that problem.

In accordance with applicant's system, the consumer sends his/her order to the product manufacturer. One or more brick-and-mortar retailers may also ultimately receive the order, but that is dictated by the product manufacturer in accordance with the product manufacturer's specified fulfillment policies.

For the foregoing reasons, it is submitted that the present claims are unobvious over the combination of Franklin, Webber and Knorr and withdrawal of the rejection is respectfully requested.

#### Claim 3

In either Franklin's, Webber's or Knorr's system, the consumer is dealing directly with a merchant-retailer to receive the goods. Why would the merchant set up his system not to fulfill a consumer's order? In applicant's system the product manufacturer is in control of fulfillment. The manufacturer, for example, may not want to fulfill any orders, but rather funnel the orders to its retailers. That is not an option for a manufacturer in Franklin's or Webber's system. The examiner cites Knorr [0050] and Webber, p. 22, to show a controller configured not to accept consumer orders. However, it is not seen where these passages support the examiner's position. The passages disclose an explanation that obligations and instructions of the parties are contained in a digital contract. But there is no teaching or motivation to configure the contract specifically to give the product manufacturer the option of not fulfilling the order and routing it to a retailer of the manufacturer's choosing. Accordingly, it is submitted that the subject matter of claim 3 is unobvious.

#### Claim 4

In Franklin there is no order flow controller. Franklin is directed to a consumer's personal shopping cart. In Webber or Knorr, the supplier does not identify retailers to fulfill orders. The merchant-retailer designates the suppliers to fulfill the orders. See Webber, Fig. 2. Customers send orders to retailers 241. The supply chain enterprises 277 fulfill the orders. The control of the fulfillment policy by the product manufacturer is clearly recited in the present independent claims. The subject matter of claim 4 is thus unobvious for the reasons given above.

### Claims 5-7

In view of the distinctions discussed above in connection with Franklin, Webber and Knorr, the back room manager of Franklin does not remedy the deficiencies of the primary references. Particularly with respect to claim 7, the passage cited by the examiner in Webber (p.23, lines 25-30) is the opposite in one sense of what is indicated in the claim. Webber teaches traditional contractual operations that must be started or completed before expiration of a time limit. Claim 7 is directed to setting a time period during which fulfillment action by a product manufacturer is prohibited. It is submitted that a time period prohibiting activity to fulfill a contract is not a traditional time limit. It would not be apparent to one of ordinary skill that applicant's feature is something intended or encompassed by Webber's "traditional" contractual time expiration event. Accordingly these claims are unobvious over the cited references.

### Claims 14-15

In view of the distinctions discussed above in connection with Franklin, Webber and Knorr, the price filter of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

### Claims 18-20

In view of the distinctions discussed above in connection with Franklin, Webber and Knorr, the escrow account manager of Webber does not remedy the deficiencies of the primary references. Particularly with respect to claim 20, Webber, p. 32, lines 26-29, mentions nothing about distributing funds in a the manner recited in the claims. Moreover, at page 39, lines 25-29, it is disclosed that funds are transferred from the customer to the seller. There is no teaching that an escrow account manager is configured to distribute funds to one or more retailers identified by the product manufacturer manufacturer, or to a combination of product manufacturer and one or more of the retailers identified by the product manufacturer. There is no reason suggested by Webber why one of ordinary skill would attempt to configure an escrow account manager to do this. Accordingly these claims are unobvious over the cited references.

Claims 24-27

In view of the distinctions discussed above in connection with Franklin, Webber and Knorr, the order list of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 34, 35 and 38-40

In view of the distinctions discussed above in connection with Franklin, Webber and Knorr, these claims are unobvious over the cited references.

Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber and Knorr and further in view of Johnson et al. ('516).

The Examiner relies on Johnson to disclose an electronic sourcing system maintaining a catalog of product information. The system allegedly checks for availability of selected items, generates purchase orders and includes a consumer interface configured to display price and availability of products by each supplier by product category. The system is thus configured to enable a consumer to search through products of a given category by supplier. Applicants respectfully traverse this rejection.

Claims 8, 9, 28, 29

Johnson does not remedy the deficiencies previously discussed above with respect to Webber, Franklin and Knorr as applied to claims 1, 2, 21 and 22. It appears that Johnson is directed to a search engine for selecting items from a catalog that generates a purchase order for the desired item from inventory locations. The supplier does not determine who fulfills the order (that is, whether it be the supplier itself, or a retailer selected by the supplier). The point of sale is at the catalogue item on the database, selected by the retailer, not by the product manufacturer. Therefore, it is submitted that the claims are unobvious over the combination of Webber, Franklin, Knorr and Johnson and withdrawal of the rejection is respectfully requested.

Claims 10-13 and 30-33 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber and Knorr, further in view of Knowlton ('057). This rejection is respectfully traversed.

Claims 10-13 and 30-33

Knowlton is relied upon to show an apparatus and method for creating and distributing graphical user interfaces configured to enable a consumer to display selected product representation in a scratch pad window. However, Knowlton does not remedy the deficiencies of Franklin, Webber and Knorr as discussed above as applied to claims 1, 2, 21 and 22. Accordingly, it is submitted that claims 10-13 and 30-33 are unobvious over the cited combination of references and withdrawal of the rejection is respectfully requested.

Claims 16, 17, 36 and 37 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Franklin in view of Webber and Knorr, further in view of Allsop ('472). This rejection is respectively traversed.

The deficiencies of Franklin, Webber and Knorr as applied to claims 1, 2, 21 and 22, from which these rejected claims ultimately depend, have been discussed above and are incorporated herein.

Allsop is relied upon by the examiner to disclose a system whereby electronic commerce is performed with links from manufacturers to authorized dealers with custom order interfaces, including a price filter. Manufacturers can transmit retail information, including payment information from authorized dealers. Transmission of retail information about payment is not relevant to determining who has the opportunity to fulfill a particular order. It is not seen how Allsop therefore remedies or is even relevant to the combination of Franklin, Webber and Knorr as applied by the examiner.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Furthermore, the present claims recite time periods, designated by the supplier, during which retailer-specified product prices are transmitted through a price filter. Webber, page 23, line 26, only mentions a traditional time expiration event. There is no disclosure that a time period as set forth in the claims is such a traditional event. Webber,

page 41, lines 20-25, is directed to the time designating the expiration of a contract. That has nothing to do with the present claims. There is no teaching in the cited art as to why one of ordinary skill would devise a time period as set forth in the claims and incorporate it into the method and system of the independent claims.

Accordingly, it is submitted that the claims are unobvious under 35 USC 103(a) and withdrawal of the rejection is respectfully requested.

It is submitted that the application is in condition for allowance.

If prosecution of this application can be assisted by telephone, the Examiner is requested to call Applicants' undersigned attorney at (510) 663-1100.

Applicants hereby petition for any further extension of time that may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this amendment is to be charged to Deposit Account No. 504480 (Order No. BDGOP001X1).

Respectfully submitted,  
WEAVER AUSTIN VILLENEUVE & SAMPSON LLP

By: /Reginald J. Suyat/  
Reginald J. Suyat  
Reg. No. 28,172

P.O. Box 70250  
Oakland, CA 94612-0250  
(510) 663-1100